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IND100612.E

India: Whether Sikh priests or Sikh musicians from India are detained and/or tortured by police on return to India (2001 - 2005)

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According to the senior director of Voices for Freedom Asia, a human rights advocacy organization operating mainly in Punjab and affiliated with Voices for Freedom, there were no cases of police torture of Sikh musicians or Sikh priests returning to India for the period 2001 to 2005 (9 Oct. 2005). However, this senior director explained that the Indian police "cracks down" on groups of Sikh musicians and priests who return to India missing members, in order to determine the whereabouts of the absent group members (12 Oct. 2005). A representative of the Committee for Information and Initiative on Punjab stated in 18 October 2005 correspondence to the Research Directorate that "priests and...religious musicians have been special targets of the police in earlier years when the police were actively engaged in combating militancy in [India]". In 2003, New Delhi police detained Sikh pop singer Daler Mehndi after he was charged with human smuggling (AFP 19 Dec. 2003). Another news article mentioned that Indian immigration authorities did not detain a Sikh separatist leader who returned to India after twenty-one years abroad, bearing an emergency certificate provided by the Indian Embassy in London, England (Canadian Press 27 June 2001). The article did not mention any contact between this returnee and Indian police (ibid.). Although no other information on the issue of detention and torture of Sikh musicians and priests on return to India could be found within the time constraints of this response, the following information on police detention and torture in India for the period 2001 to 2005 may be useful.

A new Prevention of Terrorism Ordinance (POTO) was enacted in India in October 2001 and passed as the Prevention of Terrorism Act (POTA) in March 2002, giving the Indian police "wide" powers of arrest and providing for detention without charge or trial for political suspects (HRW 2003; AFP 17 Jul. 2002; AI 2002). In addition to POTA, new state-level security legislation similar to POTA was enacted in several states, including Andhra Pradesh, Arunachal Pradesh, Karnataka and the New Delhi Union Territory (ibid. 2004; ibid. 2003).

For the period 2001 to 2003, Amnesty International reported that POTA was used to detain political opponents, human rights activists and members of minority populations (ibid. 2004; ibid. 2003; ibid. 2002). Furthermore, in 2001 torture remained "widespread" in India, especially against members of marginalized groups, and for the period 2001 to 2004 security agents enjoyed legal impunity for human rights abuses (ibid. 2005; ibid. 2004; ibid. 2003; ibid. 2002). Among its annual reports for 2001 to 2005, Human Rights Watch reported arrests and detentions of political suspects under POTA only in the report for 2002 (HRW 2003). In the opinion of Indian human rights activist and Booker prize-winner Arundhati Roy, "under the POTA regime, police torture tends to replace police investigation" (*The Hindu* 25 April 2004).

Although the Indian government repealed the Prevention of Terrorism Act in September 2004 and commented that it had been 'grossly misused' and that the existing laws were sufficient to "adequately handle the menace of terrorism," throughout 2004, state agents continued to use available security legislation "to facilitate arbitrary arrests, torture and other grave human rights violations, often against political opponents and marginalized groups" (AI 2005; AFP 7 Jun. 2004). Human Rights Watch commented in its *World Report 2005* that although the government repeal of POTA was a "major step forward for civil liberties in India," the security agencies in India still act with "legal impunity" (HRW 2005; AFP 13 Jan. 2005). In addition, Human Rights Watch also cites other laws such as the National Security Act, the Disturbed Areas Act, the Armed Forces Special Powers Act or the Armed Forces (Jammu and Kashmir) Special Powers Act used to "give security agencies unchecked powers of detention that often foster torture during interrogation" (HRW 2005). More recently, in August 2005 the Indian central intelligence agency ordered the northern states of India, particularly those with a dominant Sikh population, to "keep a check on" separatist movements (*The Statesman* 14 Aug. 2005).

A statement by the Asian Legal Resource Centre published in 2005, and submitted to the human rights commission of the United Nations Economic and Social Council, reported that "[t]orture in India is widespread, unaccounted for and rarely prosecuted...Torture is used as a cheap and easy method of investigation and also as a tool for oppression" (ALRC n.d.). Similarly, a group of human rights defenders in India issued a statement saying "[t]orture is widespread and has routinely been practiced at police stations in India. Unchallenged and unopposed it has become a 'normal' and 'legitimate' practice all over" (Parekh et al. 19 Aug. 2003). Furthermore, a 2005 in-country research study on detention and torture in Punjab conducted by ENSAAF, an organization established in

2004 and based in the United States that fights impunity in India, concluded that "in contravention of international and domestic laws, Indian security forces routinely resorted to illegal and incommunicado detention [of Punjabis accused of militancy-related or separatist activities]...and the Punjab police...frequently tortured the detainees" (ENSAAF Oct. 2005, 4; *ibid.* 19 Oct. 2005). ENSAAF outlines several factors that contribute to the existence of detention and/or torture in Punjab (*ibid.*). These factors include the persistence of police intimidation and custodial abuse in Punjab, impunity and rewarding of state officials implicated in human rights abuses, and the fact that India has neither ratified the Convention Against Torture nor defines or prohibits torture in domestic legislation (*ibid.*; UN 11 Feb. 2005).

The Asian Legal Resource Centre stated that most torture cases in India are not reported because of fear of further mistreatment, and those that are reported fail to receive due process because of inadequate legislation and corrupt practices (*ibid.*). Moreover, although the national and state human rights commissions in India can issue recommendations after investigations of reported cases of torture, these recommendations are "often ignored" (*ibid.*).

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of additional sources consulted in researching this Information Request.

References

Agence France Presse (AFP). 13 January 2005. "Human Rights Watch Slam Pakistan, India for Right Abuses." (Dialog)

_____. 7 June 2004. "India's New Government to Introduce Law to Protect Religious Minorities." (Dialog)

_____. 19 December 2003. "New Delhi Police Detain Indian Pop Star on Human Smuggling Charges." (Factiva)

_____. 17 July 2002. "161 Detained in Kashmir under India's New Anti-Terrorism Measures." (Factiva)

Asian Legal Resource Center (ALRC). 11 February 2005. United Nations Economic and Social Council (ECOSOC). "Custodial Deaths and Torture in India" in *Civil and Political Rights, Including the Questions of Torture and Detention* (E/CN.4/2005/NGO/61) <http://www.alrc.net/doc/doc/chr61/pdf/61-ALRC-11a-Custodial_deathsand_torture_in_India.pdf> [Accessed 19 Oct. 2005]

Amnesty International (AI). 2005. "India." *Amnesty International Report 2005*. <<http://web.amnesty.org/web/web.nsf/print/8505596CDDDA76D080256FDC005355A4>> [Accessed 27 Sept. 2005]

_____. 2004. "India." *Amnesty International Report 2004*. <<http://web.amnesty.org/web/web.nsf/print/DF268B432F94A3DD80256E8D0046B4C1>> [Accessed 27 Sept. 2005]

_____. 2003. "India." *Amnesty International Report 2003*. <<http://web.amnesty.org/web/web.nsf/print/427E1B8D90F8C32180256D3A0046B8C1>> [Accessed 27 Sept. 2005]

_____. 2002. "India." *Amnesty International Report 2002*. <<http://web.amnesty.org/web/ar2002.nsf/asa/india!Open>> [Accessed 13 Oct. 2005]

The Canadian Press. 27 June 2001. "Sikh Separatist Leader Arrives in India from London after 21 Years." (Factiva)

ENSAAF. October 2005. *Punjab Police: Fabricating Terrorism through Illegal Detention and Torture*. <<http://www.ensaaf.org/fabricatingterrorism.pdf>> [Accessed 20 Oct. 2005]

_____. 19 October 2005. Correspondence from Executive Director.

The Hindu. 25 April 2004. Arundhati Roy. "How Deep Shall We Dig?" (Factiva)

Human Rights Watch (HRW). 2005. "India." *World Report 2005*. <http://hrw.org/english/docs/2005/01/13/india9824_txt.htm> [Accessed 13 Oct. 2005]

_____. 2003. "India." *World Report 2003*. <<http://www.hrw.org/wr2k3/asia6.html>> [Accessed 13 Oct. 2005]

Parekh, Bharathi G. et al. 19 August 2003. Consultation on the Convention Against Torture, Kerala, India. <<http://www.article2.org/mainfile.php/0204/97>> [Accessed 19 Oct. 2005]

Representative, Committee for Information and Initiative on Punjab. 18 October 2005. Correspondence.

Senior Director, Voices for Freedom Asia. 12 October 2005. Correspondence.

_____. 9 October 2005. Correspondence.

The Statesman. 14 August 2005. "Sikh Insurgency Revival Feared." (Factiva)

Additional Sources Consulted

Internet sources, including: Amnesty International; Asia Foundation; Committee for Information and Initiative on Punjab; Confederation of Human Rights Organizations, India; *Country Reports on Human Rights Practices*; Factiva; Freedom House; Global Sikhs; Human Rights Watch; International Religious Freedom Report; LEXIS-NEXIS; Movement Against State Repression, India; National Human Rights Commission in India; Open Society Institute; People's Union for Civil Liberties, India; People's Union for Democratic Rights, India; Punjab Human Rights Organization; Punjab State Human Rights Commission; South Asia Human Rights Documentation Centre; *The Nation*; *The Times of India*; *The Tribune*; U.S. Committee for Refugees; UNHCR; United Sikhs; University of California; University of Minnesota Human Rights Library; University of Windsor; World Sikh Organization.

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